IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 300 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJCHEM DISTILLERS INDIA LTD.

Appearance:

1. INCOME TAX APPLICATION No. 300 of 1999
MR MANISH R BHATT for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 07/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The revenue prays for a reference on following question of law in respect of assessment year 1985-86 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee was entitled to depreciation in respect of the plant not used for business purpose but used for trial in connection with research and development ?"

2. The Income-tax Appellate Tribunal rejected the reference application under Section 256(1) of the Income-tax Act, 1961 on the ground that all that the Tribunal has done by its order giving rise to the present application is to restore the matter to the file of the Assessing Officer. The Tribunal remitted the matter to the Assessing Officer for fresh consideration of the issue. We may point out that the said order of the Tribunal rejecting the reference application under Section 256(1) was passed on 19.11.1998. A period of more than three and a half year has already elapsed. No useful purpose would, therefore, be served by entertaining the present reference application and directing the Tribunal to refer the aforesaid question of law for the opinion of this Court. If the Assessing Officer has already decided the matter in the meantime pursuant to the order of remand, the aggrieved party would have availed of the appropriate remedies available to them. Hence, we see no justification for granting this application at this stage.

3. The application is accordingly dismissed for the aforesaid reasons. Rule is discharged with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-